

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

FILED
DISTRICT COURT
AUGUSTA, GA.
2008 DEC 16 A 943
CLERK *[Signature]*
SOUTHERN DISTRICT OF GA.

DENNIS MCCORMICK,)
)
Plaintiff,)
)
v.) CV 308-084
)
FNU ALLIGOOD, Officer, and FNU)
BRACEWELL, Officer,)
)
Defendants.)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff was an inmate detained at Dodge State Prison, in Chester, Georgia, at the time he filed the captioned case pursuant to 42 U.S.C. § 1983. He is *pro se* and has been granted permission to proceed *in forma pauperis*. On September 15, 2008, the Court cautioned Plaintiff that while this action is pending, he shall immediately inform this Court of any change of address and failure to do so could result in the dismissal of this case. (Doc. no. 3, p. 3).

On October 6, 2008, the Court directed Plaintiff to pay an initial filing fee of \$19.56 within 30 days of the date of the Order. (Doc. no. 6). Plaintiff failed to respond. On November 11, 2008, the Court granted Plaintiff ten (10) additional days to comply with the terms of the Court's October 6th Order. (See doc. no. 7). This time period has expired, yet Plaintiff has failed to pay his initial filing fee. Nor has Plaintiff offered any explanation for his failure to pay.

Moreover, Plaintiff's service copy of the Court's Order was returned and marked "Undeliverable." Thus, in addition to failing to pay an initial partial filing fee, Plaintiff has also failed to comply with the Court's instructions to notify the Court of a change of address. Plaintiff's failure to provide the Court with an address where he can be reached has the effect of saddling the Court with a stagnant case.

The Eleventh Circuit has stated that "the district court's power to control its docket includes the inherent power to dismiss a case" Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp., S.A., 711 F.2d 989, 998 (11th Cir. 1983); see also Burden v. Yates, 644 F.2d 503, 505 (5th Cir. Unit B May 1981) ("It is also clear that a district court's power to control its docket includes the inherent power to dismiss a case."); Hyler v. Reynolds Metal Co., 434 F.2d 1064, 1065 (5th Cir. 1970) ("It is well settled that a district court has inherent power to dismiss a case for failure to prosecute . . ."). Moreover, the Local Rules of the Southern District of Georgia dictate that an "assigned Judge may, after notice to counsel of record, *sua sponte* . . . dismiss any action for want of prosecution, with or without prejudice . . . [for] failure to prosecute a civil action with reasonable promptness." Loc. R. 41.1(c).

The test for determining the appropriateness of dismissal is whether there is "a clear record of delay or willful contempt and a finding that lesser sanctions would not suffice." Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985). Here, Plaintiff's failure to provide the Court with a valid address amounts not only to a failure to prosecute, but also an abandonment of his case. This is precisely the type of neglect contemplated by the Local Rules. Furthermore, because Plaintiff is proceeding *in forma pauperis*, the Court finds that

the imposition of monetary sanctions is not a feasible sanction.

However, the Court recognizes that Plaintiff is proceeding *pro se*, and courts have voiced a dislike for the harshness of dismissing a *pro se* case with prejudice prior to an adjudication on the merits.¹ See, e.g., Minnette v. Time Warner, 997 F.2d 1023, 1027 (2d Cir. 1993); see also Dickson v. Ga. State Bd. of Pardons & Paroles, No. 1:06-CV-1310-JTC, 2007 WL 2904168, at *6 (N.D. Ga. Oct. 3, 2007). Thus, the Court is not persuaded that it would be appropriate to dismiss the instant action with prejudice. The Court is not permanently barring Plaintiff from bringing a meritorious claim. It is simply recommending dismissing the case without prejudice until such time as Plaintiff is willing to file his case and pursue it.

For the reasons set forth herein, the Court **REPORTS** and **RECOMMENDS** that this case be **DISMISSED** without prejudice and that this case be **CLOSED**.

SO REPORTED and RECOMMENDED this 16th day of December, 2008, at Augusta, Georgia.



W. LEON BARFIELD
UNITED STATES MAGISTRATE JUDGE

¹Unless the Court specifies otherwise, a dismissal for failure to prosecute operates as an adjudication on the merits. See Fed. R. Civ. P. 41(b).